In the High Court of Judicature at Madras

Dated:14.03.2005

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.K. KRISHNAN

Habeas Corpus Petition Nos.914 & 943 of 2004

Mrs. Nazia .. Petitioner in HCP.No.914/04

S. Sahul Hameed .. Petitioner in HCP.No.943/04

vs.

1. The State of Tamil Nadu rep. By its
   Secretary to Government
   Public (SC) Department
   Fort St. George
   Chennai 9.
2. The Union of India rep. By its
   Secretary, Ministry of Finance
   Department of Revenue
   Janpath Bhavan
   6th Floor, New Delhi 1. .. Respondents in HCP.914/04

1. The State of Tamil Nadu rep.
   By its Secretary to Government
   Public (SC) Department
   Fort St. George
   Chennai 9.
2. The Union of India rep. By its
   Secretary, Ministry of Finance
   Department of Revenue
   (COFEPOSA Unit)
   Central Economic Intelligence Bureau
   Janpath Bhavan, Janpath
   New Delhi 110 001.

3. The Superintendent of Central Prison
   Central Prison, Chennai 3. .. Respondents in HCP.943/04

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Writ Petitions are filed under Article 226 of the Constitution of India praying of the issuance of the writ of Habeas Corpus (1) calling for the records of the first respondent made in his reference in GO.No.SR.I/528-4/2004 dated 24.5.2004 and set aside the same direct the respondents to produce the body of the detenu Santhanameeran, Son of Late S.Nainar detained under the provisions of the conservation of Foreign Exchange and prevention of Smuggling Activities Act who is detained in Central Prison, Chennai before this Hon'ble Court and set him at liberty (HCP.914/2004) (2) calling for the records relating to the detention order in G.O.No.SR.I/528-6/04, Public (SC) Department dated 24.5.2004 passed by the first respondent, quashing the same and directing the respondents to produce the body of the person of the detenu, S.Sahul Hameed, Son of Sheiks Dawood, now detained in the Central Prison, Chennai as COFEPOSA, detenu, before this Hon'ble Court and set him at liberty.

For petitioner : Mr. I, Subramanian,Sr. Counsel
In HCP.914/04 for Mr. R. Palanisamy

For petitioner : Mr. K.A. Jabbar
In HCP.943/04

For respondents: Mr. V. Arul, Government Advocate
(Crl.side) for R.1 in both the
Petitions
and for R.3 in HCP.No.943/04

Mrs. Vanathi Srinivasan
Addl. Central Govt., standing
counsel for R2 in both the HCPs.,

..

COMMON ORDER

(Order of the Court was made by P. SATHASIVAM,J.,)

Aggrieved by the orders of detention passed in the case of N. Santhanameeran and S.Sahul Hameed under Section 3 (1) (i) of Conservation of Foreign Exchange and Smuggling Activities Act, 1974, detaining them in Central Prison, Chennai, the above petitions have been filed respectively by one Mrs. Nazia, niece of Santhanameeran and S. Sahul Hameed, the detenu himself.

2. It is seen from the grounds of detention that in pursuance of Intelligence Report that red sanders, a prohibited item for export were being attempted to be exported by M/s. Suriya Coir Products, Products, Pollachi and the same were being brought to Tutitcorin Port in Container No.CRXU-013525-8 loaded in Trailor No.AP-16-W-0084, under Shipping Bill No.1290088 dated 28.04.2004, the Officers of the Directorate of Revenue Intelligence (DRI) intercepted the above container at Tuticorin

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Port. After seizure of the contraband and based on the statements of various persons connected there with, both Santhanameeran and Sahul Hameed were located at the reception area of Hotel Vijay Park, Arumbakkam, Chennai 106, on 11.05.2004 and enquired by the DRI Officers. After perusing the materials, and obtaining statements from various persons, including the above mentioned two persons, both of them were arrested on 11.05.2004 and produced before ACMM, EO-II, Chennai on 12.05.2004. Considering all the relevant materials, the Government, after satisfying themselves with regard to the nexus of the detenus with the smuggling of the goods, passed an orders of detention on 25.04.2004, detaining them under Section 3(1)(i) under COFEPOSA Act and kept under custody in Central Prison, Chennai.

3. Heard, Mr. I. Subramanian, learned senior counsel for the petitioner in HCP.No.914 of 2004, K.A. Jabbar for the petitioner in HCP.No.943 of 2004 and Mr. V. Arul, learned Government Advocate (Crl.side) for the first respondent in both the petitions and for third respondent in HCP.No.943 of 2004 as well as Mrs. Vanathi Srinivasan for second respondent in both the petitions.

4. After taking us through all the materials connected with the orders of detention, Mr. I. Subramanian, learned senior counsel has raised the following contentions:

(i) The materials placed disclose that there is no enough time to pass the orders of detention as claimed and in other words, there could not be proper and enough time available to the detaining authority to pass the detention orders within a period of one day;

(ii) Though the C.Ds. used for recording question and answers at the time of enquiry were sent to the Court, neither the same have been placed before the Advisory Board for consideration, nor supplied to the detenus.

(iii) Regarding the arrest and detention, the family members of the detenu in HCP.NO.914 of 2004 were not informed in the manner known to law.

(iv) Inasmuch as the detenus are in custody, in the absence of any bail application either filed or pending, there is no imminent possibility of their coming out on bail, and hence there is no need to pass detention orders.

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5. In addition to the above contentions, Mr. K.A. Jabbar, learned counsel appearing for the petitioner in HCP.No.943 of 2004 would submit that Tamil translation copies of vital documents, including remand order were not supplied to the detenu. According to him, since the detenu knows only Tamil, the non-supply of those documents in the known language, vitiates the detention order.

6. On the other hand, learned Government Advocate (Criminal side) by drawing our attention to various grounds of detention and materials placed, copies of which were supplied to the detenus would submit that the detaining authority, after considering all the relevant materials and compelling circumstances, passed the orders of detention in both the cases, which cannot be questioned. He also submitted that all the procedural aspects have been scrupulously followed; accordingly, prayed for dismissal of both the petitions.

7. We have carefully considered the rival contentions and perused the materials placed. Inasmuch as this Court is not sitting in appeal, there is no need to go into the merits of the orders passed by the authority detaining both the detenus under COFEPOSA Act, however, this Court has to consider whether the detention orders passed in both the cases are in accordance with law and in compliance with the mandates prescribed in the Constitution.

8. With regard to the first contention raised by Mr. I. Subramanian, learned senior counsel that it would not be possible for a human being to verify 543 documents, apply his mind and pass orders of detention within a period of one day. Elaborating this contention, it is stated that the orders of detention were made on 25.04.2004. According to the learned senior counsel, one of the documents was received by the Trichy Office of Directorate of Revenue Intelligence only on 21.05.2004 and 22nd and 23rd May, 2004 were holidays, being Saturday and Sunday and the said document posted at Trichy might have reached the Office at Chennai only on 25.04.2004; hence, the detaining authority could not have enough time to pass the orders of detention on the same day, i.e., on 25.04.2004, not only against the detenus, but also 5 other persons said to have been involved in the case.

9. First of all, even in the additional affidavit dated 09.11.2004 it is stated that the last document alone was received by the Trichy Office of DRI on 21.05.2004. In other words, it is not the case of the petitioners that all the documents referred to and relied on by the detaining authority were received only on 21.05.2004. Further, it is relevant to refer the additional counter affidavit dated 27.12.2004 filed on behalf of the second respondent, wherein, particularly in para 6, it is stated that,

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> "the detention orders were passed on perusal of the materials placed before the detaining authority including the document referred to by the detenu and contemporaneously formulating the grounds in respect of the every detenu. While so, the analogy drawn by the detenu is unsustainable and no prejudice appears to have caused to the detenu and no explanation as called for by the detenu appears to be necessary. The detention order having been passed on arriving at subjective satisfaction on the materials placed before the detaining authority and as per the provisions of the Act is valid in law."

Though learned senior counsel has relied on a Division Bench decision of this Court in the case of Mohammed Marzook vs. Government of India reported in 1990 (2) MWN 259, in the light of the explanation offered in the additional counter affidavit (vide para 6) and the reasons mentioned therein, we reject the first contention.

10. Coming to the second contention, namely, non-supply of CDs. to the detenus as well as non-placing the same before the Advisory Board, in the counter affidavit dated 20.10.2004, it is stated that when enquired under Section 108 of the Customs Act, 1962, the detenu Sahul Hameed, inter aliea, spoke about the other detenu Santhanameeran, and his involvement in the smuggling of red sanders. However, when Santhanameeran, was enquired under Section 108 of the Customs Act, 1962, and the case materials were shown to him, thereby providing an opportunity to put forth his side, the detenu refused to see or go through the said materials and offer his version, and he did not cooperate with the enquiry, but he made a statement that he was in no way connected with the summons and in no way involved in the subject which had been given in the said summons. The further information in para 9 is relevant,

> "9. …… This non-cooperation on the part of the detenu was videographed and the fact of non-cooperation has been well set out the endorsement of the officer who enquired him and in the remand application itself. Further to show this non-cooperation of this detenu, the CD made out thereof was submitted to the remanding Court. At the time of remand, the detenu did not make any complaints against the officers or put forth his side. In the circumstances, when the said CD depicting the non-cooperation of this detenu in the enquiry and the other materials were placed before the detaining authority,

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the said authority did not place reliance on the said CD on the face of the other material bearing evidence about the involvement of the detenu and hence the CD was not furnished to the detenu. Thus, no prejudice appears to be caused to the detenu by non-supply of the CD to the detenu and by non-placing of the same before the Hon'ble Advisory Board. …."

11. It is clear from the above assertion that only non-cooperation on the part of the detenu was videographed and the fact of non-cooperation has been set out by the endorsement of the officer who enquired him and in the remand application itself. Further, as rightly stated, at the time of remand, the detenus did not make any complaint against the Officers or put forth their side on the materials placed. It is also seen that the detaining authority did not place reliance on the said CDs and only on other materials bearing evidence about the involvement of detenus, and hence, no prejudice has been caused to the detenus by the non-supply of CDs to them and non-placing the same before the Advisory Board. In such a circumstance, the following decisions relied on, viz.,

(i) K.V. Jesudasan vs. State of Tamil Nadu (1989 Crl.L.J. 637); and
(ii) E. Rajapandi vs. State etc., (1995 (2) L.W (Crl.) 474)

are not helpful to the case of the petitioners.

12. Coming to the third contention, namely, that the arrest was not properly informed to the family members, in so far as the detenu in HCP.No.914 of 2004 is concerned, the learned senior counsel appearing for the petitioner has brought to our notice the Grounds (xxiii) and (xxiv) of Grounds of Detention, and submitted that the Officers of DRI were aware of the residential premises of the detenu is namely, Old.No.5, New No.7, Alwarpet Street, Alwarpet (I Floor) Chennai 18, however, communication was sent to Old No.1/377 (New No.1/1091), G.N.T. Road, Red Hills, Chennai, when none resided in the said premises. With regard to the said claim, in the additional counter affidavit it is stated that while giving statement on 11.05.2004, the detenu Santhanameeran has clearly stated that he was residing at No.1/377, G.N.T. Road, Red Hills, Chennai and based on his statement, the telegram regarding his arrest was sent to the address given by the detenu. We are of the view that the detaining authority fulfilled the constitutional requirement regarding written intimation about the arrest of the detenu and we find no substance in the contention raised by the learned senior counsel for the petitioner.

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13. Coming to the last contention raised by Mr. I. Subramanian, learned senior counsel that in the absence of bail application, detenus having been in custody, there is no imminent possibility of their coming out on bail, and the detention orders are vitiated. In grounds of detention, in para 5, the detaining authority has stated that,

> "5. The State Government are also aware of the fact that you are in the Central Prison, Chennai as remand prisoner; that the said judicial remand is only for the period specified in law; that you are entitled to file a bail petition and that there is likelihood of you being released on bail or statutory bail. The State Government are satisfied that there is likelihood of your indulging in such prejudicial activities again while on bail and there is a compelling necessity to prevent you from smuggling of goods. The State Government, therefore, consider that it is necessary to detain you under section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974."

14. A perusal of the above statement shows that the detaining authority was aware that no bail petition was filed on behalf of the detenu and also aware that the detenu was not prevented from filing a bail petition and he would be granted bail and also released on bail on completion of the statutory period specified in Criminal Procedure Code. As rightly pointed out, this position has been spelled out in grounds of detention. In the case of Binod Singh vs. District Magistrate, Dhanbad, Bihar and others reported in 1986 SCC (Crl.) 490, the Supreme Court has held that,

> " 7. ….. There must be awareness of the facts necessitating preventive custody of a person for social defence. If a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised. ….. "

15. It is also worthwhile to refer the subsequent decision of the Supreme Court in the case of Abdul Sathar Ibrahim Manik vs. Union of India and others reported in 1992 (SCC) Cri. 1, wherein their Lordships after referring a Three Judge Bench decision in the case of N. Meera Rani vs. Government of Tamil Nadu reported in 1989 (4) SCC 418 : 1989 SCC (Cri.) 732 and the case of Kamarunnissa vs. Union of India reported in 1991 (1) SCC 128, formulated the following principles / guidelines.

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"(1) A detention order can validly be passed even in the case of a person who is already in custody. In such a case, it must appear from the grounds that the authority was aware that the detenu was already in custody.

(2) When such awareness is there then it should further appear from the grounds that there was enough material necessitating the detention of the person in custody. This aspect depends upon various considerations and facts and circumstances of each case. If there is a possibility of his being released and on being so released he is likely to indulge in prejudicial activity then that would be one such compelling necessity to pass the detention order. The order cannot be quashed on the ground that the proper course for the authority was to oppose the bail and that if bail is granted notwithstanding such opposition the same can be questioned before a higher Court.

(3) If the detenu has moved for bail then the application and the order thereon refusing bail even if not placed before the detaining authority odes not amount to suppression of relevant material. The question of non-application of mind and satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that the detenu was in actual custody.

(4)…..
(5) ……
(6) …… "

16. It is clear from the grounds of detention that the detaining authority after taking note of the relevant materials, expressed that it was aware that the detenus were already in custody and there was possibility of their coming out on bail, and on being so released, they are likely to indulge in prejudicial activities and that would satisfy it to order detention of the detenus. In the light of the pronouncement of law declared by the Supreme Court, on going through the grounds of detention and other materials, we are of the view that the detaining authority has satisfied itself that there are compelling circumstances and passed the impugned orders of detention, which are valid in law; accordingly, we reject the said contention also.

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17. Coming to the other contention raised by Mr. K.A. Jabbar that Tamil translation of remand order was not supplied and the Tamil translated copies were also not furnished relating to the documents available at Pages 5, 6, 12 to 19, 22 to 25, 78 to 86, 94, 95, 98 to 106, 108 to 110. In para 13 of the counter affidavit dated 20.10.2004 filed in HCP.No.914 of 2004, it is stated that the remand order of the learned Magistrate was inadvertently not translated into Tamil, however the observation of the learned Magistrate in the remand order was incorporated in para (xxx) of grounds of detention and the grounds of detention was also supplied to the detenu in Tamil. Further, while serving the documents, including the remand order, the detenu was explained the same in Tamil, the detenu cannot be said to be prejudiced. When the observation of the learned Magistrate in the remand order which was mentioned in the grounds of detention has been furnished to the detenu in Tamil language, we are satisfied that the detenu has not been prejudiced in any way and on this ground it cannot be claimed that the detention order is vitiated.

18. Regarding non-supply of Tamil translated copies of certain documents mentioned above, in the counter affidavit it is stated that all those documents are relating to the seizure of red sanders at Tuticorin port and those documents being in standard formats have been they handled and understood as such. It is also stated that while serving those documents, the same have also been explained to the detenu in the language known to him. Hence, the detenu cannot be said to be prejudiced. In Abdul Sathar Ibrahim Manik case 1992 SCC (Cri.) 1 (referred to above) the Supreme Court has held that failure to supply each and every document merely referred to and not relied upon will not amount to infringement of the rights guaranteed under Article 22 (5) of the Constitution. It is also held that whether a document is casually or passingly referred to or whether it has also formed the material for arriving at the subjective satisfaction, depends upon the facts and grounds in each case. It is also the claim of the detaining authority that those documents are only in standard format regarding export of certain materials. It is not in dispute that if the documents are in standard format / Departmental instructions etc., as held by the Full Bench of this Court in the case of Ansar Ali vs. State of Tamil Nadu reported in 2002 (2) CTS 321, no prejudice can be caused to detenu by not providing translation of standard printed public documents contents of which are common in those documents. It is also held that non supply of translation of those documents will not vitiate the order of detention. It cannot be claimed that because of non-supply of Tamil translation of the documents mentioned above, the detention order is vitiated. In this regard, it is relevant to mention Kamarunnisa case 1991 (1) SCC 128 (cited supra), wherein their Lordships have held that,

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"14. …. It is not sufficient to say that the detenus were not supplied the copies of the documents in time on demand but it must further be shown that the non-supply has impaired the detenu's right to make an effective and purposeful representation. Demand of any or every document, however irrelevant it may be for the concerned detenu, merely on the ground that there is a reference thereto in the grounds of detention, cannot vitiate an otherwise legal detention order. No hard and fast rule can be laid down in this behalf but what is essential is that the detenu must show that the failure to supply the documents before the meeting of the Advisory Board had impaired or prejudiced his right, however slight or insignificant it may be. In the of present case, except stating that the documents were not supplied before the meeting of the Advisory Board, there is no pleading that it had resulted in the impairment of his right nor could counsel for the petitioners point out any such prejudice. We are, therefore, of the opinion that the view taken by the Bombay High Court in this behalf is unassailable. "

19. It is clear that though the counsel has raised such objection before this Court, the fact remains that the detenu has not showed that the failure to supply of those translated documents has impaired or prejudiced his right before the meeting of the Advisory Board. By applying the above principles of the Supreme Court and in view of the assertion of the respondents that all those documents are in standard formats, we are unable to accept the claim made by the learned counsel for the petitioner.

In the light of our discussion, we do not find any ground for interference. Accordingly, both the petitions are dismissed as devoid of merits.

14.03.2005

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to Government
   State of Tamil Nadu
   Public (SC) Department
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   Chennai 9.

2. The Secretary,Union of India,
   Ministry of Finance
   Department of Revenue
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3. The Secretary, Union of India
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   Central Economic Intelligence Bureau
   Janpath Bhavan, Janpath
   New Delhi 110 001.

4. The Superintendent of Central Prison
   Central Prison, Chennai 3.

5. The District Collector, Chennai.

6. The Public Prosecutor, Madras.

7. The Joint Secretary to Govt.,
   Public (Law and Order), Dept.,Chennai-9.

8. The Sub Assistant Registrar
   COFEPOSA Unit, High Court, Madras.

1 cc to Ms.Vanathi Srinivasan, ACGSC. SR.12090
1 cc to R.Palanisamy, Advocate, SR.12184

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